

V. Perumal Vs. State of Madras, Represented by the Secretary to Government, Rural Development and Local Administration Department and anr.

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Court : Chennai

Decided On : Mar-09-1967

Reported in : (1968)1MLJ27

Appellant : V. Perumal

Respondent : State of Madras, Represented by the Secretary to Government, Rural Development and Local Administration Department

Advocate for Pet/Ap. : Mr. V.K. Thiruvengkatachari

Judgement :

ORDER

P.S. Kailasam, J.

1. This petition is filed by the President of the Manapparai Town Panchayat for the issue of writ of certiorari calling for the records pertaining to the formation of the Manapparai Municipality and quashing G.O.Ms. No. 2318, Rural Development and Local Administration Department, dated 30th September, 1966.

2. The petitioner is the President of the Manapparai Town Panchayat. The strength of the panchayat is 16 members consisting of 15 elected members and one co-opted woman member. The petitioner was elected as the President of the Panchayat on 19th April, 1965 for a period of five years. The Government issued G.O.Ms. No. 1989, dated 12th August, 1966 proposing to constitute the area within the jurisdiction of the Manapparai, Kannudaiyanpatti, Kalingapatti and Usilampatti Panchayats into a Municipality. A notification was also issued under Section 4(1)(a) of the Madras District Municipalities Act (V of 1920) declaring the intention of the Government to constitute a Municipality in the name of Manapparai within the jurisdiction of Manapparai, Kannudaiyanpatti, Kalingapatti and Usilampatti Panchayats. It was also notified that any inhabitant of the area desiring to object to the proposal might submit his objections in writing to the Government within six weeks from the date of publication of the notification in the Fort St. George Gazette. Several representations were made regarding the proposal, and the Government by G.O.Ms. No. 2318, Local Administration, dated 30th September 1966 directed that the Municipality be constituted with effect from 1st October, 1966. A notification was appended to the effect that in exercise of the powers conferred by Sub-section (3) of the Section 4 of the Madras District Municipalities Act, 1920, the Governor of Madras declared that the local area now within the jurisdiction of the Manapparai, Kannudaiyanpatti, Kalingapatti and Usilampatti panchayats should constitute a municipality with effect from 1st October, 1966. The Notification also specified that from the date of the constitution of the Municipality, the Manapparai Municipality Council shall consist of twenty councilors.

3. The validity of this notification is challenged by the petitioner in this writ petitioner on the ground that the constitution of a Municipality by integrating several separate panchayats is beyond the powers conferred on the Government under the Panchayats Act and the District Municipalities Act. It was also contended that the members and the President of the Manapparai Town Panchayat having been elected for a period of five years had vested right and that the Government was not entitled to deprive them of their right by constituting the Municipality. It was alleged that the order was passed in fraud of the powers of the Government and mala fide by siding with a group of the Congress party.

4. Mr. V.K. Thiruvengkatachari, learned Counsel for the petitioner, did not press the contention that the order was illegal due to its depriving the members of their term of office. The plea that the order was vitiated as having been passed mala fide was also not pressed. The only question that was pressed before me was that the order passed was beyond the powers of the Government. Section 4 of the District Municipalities Act V of 1920 empowers the State Government to create municipalities. Section 4(1)(a) provides that subject to the provisions of Section 5 of the Madras Panchayats Act, 1958 the State Government may by notification declare their intention to constitute as a municipality any town, village, hamlet, bazaar station or other local area or any group of the same in the immediate neighbourhood of one another. Sub-section (2) to Section 4 enables an inhabitant of a local area to object to the proposal of constituting a municipality within six weeks from the publication of the notification. The words 'village or other local area' by virtue of Section 197 of the Madras Panchayats Act XXXV of 1958 shall be deemed to be a reference to a panchayat village, panchayat town, panchayat development block or panchayat union as the circumstances may require. The power under Section 4(1)(a) of the District Municipalities Act, 1920, is to empower the Government to constitute a municipality by including any town, village, hamlet, bazaar, station or other local area or any group of the same in the immediate neighbourhood of one another. But Section 4 of the District Municipalities Act is subject to the provisions of Section 5 of the Madras Panchayats Act, 1958. Section 5 of the Madras Panchayats Act, 1958, enables the Government to constitute certain panchayat areas as municipalities. Section 5(1) empowers the Government by notification to direct that any panchayat town with a population of not less than twenty thousand and with an estimated annual income of not less than one lakh of rupees be constituted as or included in a municipality for the purposes of the Madras District Municipalities Act, 1920 with effect on and from such date as may be specified in the notification, provided that before issuing a notification under this sub-section the panchayat concerned shall be given a reasonable opportunity for showing cause against such proposal. Section 5(2) enables the Government on an application from the Panchayat concerned by notification to direct that any local area in which a town panchayat exercises jurisdiction with a population of less than twenty thousand but has an annual income exceeding one lakh of rupees be

constituted as or included in a municipality for the purposes of the Madras District Municipalities Act, 1920. Under the proviso to this sub-section it is stated that the Government shall not so direct if the panchayat union council exercising jurisdiction over the area concerned objects to the issue of such direction and the Government are of opinion that the objection is well founded. Thus it will be seen under Sub-section (1) in the case of a town panchayat with a population of not less than twenty thousand and an estimated annual income of not less than one lakh of rupees the Government may constitute a municipality after giving the panchayat a reasonable opportunity for showing cause against such proposal, while in the case of a panchayat, where the population is less than twenty thousand but the annual income exceeds one lakh of rupees, the Government may on an application from the panchayat constitute a municipality but shall not do so if the objection by the panchayat union council as to the constitution of a municipality is well founded. The population of Manapparai Panchayat is 17,902 and the income is over a lakh of rupees, and, therefore, if Section 5(2) is applicable the municipality can be constituted only on an application by the Manapparai Town Panchayat. So far as the other Kannudaiyanpatti, Kalingapatti and Usilampatti panchayats are concerned, the population of these panchayats is less than twenty thousand and the income less than one lakh of rupees. Therefore Sub-sections (1) and (2) of Section 5 of the Madras Panchayats Act will not be applicable to these panchayats. As the provisions of Section 4(1) of the Madras District Municipalities Act are subject to the provisions of Section 5 of the Madras Panchayats Act, 1958, if the constitution of the municipality falls within the scope of Section 5(1) or Section 5(2) of the Madras Panchayats Act, the procedure according to Section 5(1) or (2) should be followed and to that extent Section 4(1) of the Madras District Municipalities Act cannot have any operation. Mr. V.K. Thiruvengkatachari submitted that as special provisions have been enacted in the Madras Panchayat Act in the case of constitution of Municipalities, recourse should be had only to the Madras Panchayat Act. Learned Counsel referred to a passage in Halsbury's Laws of England, Volume 36, 3rd edition, page 405 where the law is stated thus:

When it is provided that two statutes are to be read together or construed as one, every part of each of them must be construed as if it had been contained in one statute, unless there is some manifest discrepancy, making it necessary to hold

that the later statute has to some extent modified something in the earlier statute.... The earlier enactment may of course be directly or indirectly rendered inoperative pro tanto by an inconsistent provision of the later, but if it is reasonably possible to construe the enactments so as to give effect to both, that must be done.

The general principle is stated as follows at page 466:

The rule is, therefore, that one provision repeals another by implication if but only if, it is so inconsistent with or repugnant to that other that the two are incapable of standing together.

Learned Advocate-General appearing for the State did not dispute the proposition of law as expounded in the passages cited above, but submitted that the two statutes could be construed together as they are not inconsistent or repugnant to each other and are capable of standing together. He further contended that because of the specific provisions in the Madras District Municipalities Act which provides that Section 4 is subject to the provisions of Section 5 of the Madras Panchayats Act, 1958, if there is any inconsistency, the provisions of Section 5 of the Madras Panchayats Act should prevail.

5. If the State Government wanted to constitute Manapparai Town Panchayat as a Municipality under Section 5(2) of the Madras Panchayats Act, it could have been only on an application by the Manapparai Panchayat after observing the procedure laid down in Section 5(2) of the Madras Panchayat Act. But in this case what was done by the Government was to constitute a municipality by amalgamating four panchayats. Sections 5(1) and (2) of the Madras Panchayats Act do not provide for constituting a municipality by combining a group of panchayats. The provision for constituting a group of panchayat is made only under Section 4(1) of the Madras District Municipalities Act. Therefore, in the case of constituting a municipality by combining a group of panchayats the provision applicable is only Section 4(1) of the District Municipalities Act. Thus there is no conflict and the order of the Government cannot be questioned.

6. The function of the Government in constituting a municipality being administrative in nature, it is not necessary for them to give their reasons for the order. In Writ Petition Nos. 425 and 660 of 1964 Ramakrishnan, J., in dealing with the validity of a notification by the Government constituting the Alandur Town Panchayat into a Municipality under Section 4(3) of the District Municipalities Act by including three other panchayats held that the provisions of Sections 5(1) and 5(2) were not applicable and that the notification was made validly under Section 4(1)(a) of the District Municipalities Act. I am in respectful agreement with the view taken by the learned Judge.

7. In the result the legality of the order of the Government constituting the Manapparai Town Panchayat as a Municipality by including three other panchayats cannot be assailed. The writ petition is dismissed. There will be no order as to costs.